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EXAMINER	
PIZIALI, JEFFREY J	

ART UNIT	PAPER NUMBER
2629	

NOTIFICATION DATE	DELIVERY MODE
03/05/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@sawyerlawgroup.com

Office Action Summary	Application No.	Applicant(s)	
	10/722,084	KAWANO, SEIICHI	
	Examiner	Art Unit	
	Jeff Piziali	2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 December 2008 and 20 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-7* is/are pending in the application.

4a) Of the above claim(s) *3 and 5* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,6 and 7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/938,221.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent *Application No. 09/938,221*, filed on *23 August 2001*.

Election/Restrictions

2. ***Applicant's election with traverse of Group I (claims 1, 2, 6, and 7)*** in the reply filed on *15 December 2008* is acknowledged.

The Election states, "*In response, and as required by the Office Action, Applicant elects group I, related to claims 1,2, 6 and 7 drawn towards a brightness adjusting system, with traverse*" (page 5).

This is not found persuasive because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

3. ***Claims 3 and 5 are withdrawn*** from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on *15 December 2008*.

4. This application contains claims 3 and 5 drawn to an invention nonelected with traverse in the reply filed on *15 December 2008*. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Drawings

5. The drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the figures.

Specification

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

7. Claims 2 and 7 are objected to because of the following informalities:

The claim sentences do not end with a period punctuation mark.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Claim 1 recites, "***a brightness adjusting system, comprising:***

a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit; and

a brightness adjuster to adjust a display brightness of the display unit according to the calculated first display brightness, wherein

in response to a second application being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness."

This "***first/second applications displayed in first/second windows***" subject matter is not found in the original disclosure of the invention.

Claim 6 recites, "***the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application***."

This "***word processing, spreadsheet application, and image processing application***" subject matter is not found in the original disclosure of the invention.

10. Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites, "***a brightness adjusting system, comprising:***

a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit; and

a brightness adjuster to adjust a display brightness of the display unit according to the calculated first display brightness, wherein

in response to a second application being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness."

This "***first/second applications displayed in first/second windows***" subject matter is not enabled by the original disclosure of the invention.

Claim 6 recites, "***the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application***."

This "***word processing, spreadsheet application, and image processing application***" subject matter is not enabled by the original disclosure of the invention.

11. The remaining claims are rejected under 35 U.S.C. 112, first paragraph, as being dependent upon rejected base claims.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. Claim 1 is amenable to two or more plausible claim constructions.

The use of the phrase "***a display brightness of the display unit***" renders the claim indefinite.

The claimed "***display brightness of the display unit***" is amenable to two plausible definitions.

Based on the description provided in the Specification, "***a display brightness of the display unit***" could be interpreted to mean:

(a) The "*first display brightness in a first application displayed in a first window on a display unit*" (claim 1, line 2) only.

(b) The "*second display brightness of the second window*" (claim 1, lines 9-10) only.

(c) A display brightness wholly distinct, separate and independent from the first and second windows.

(d) A display brightness encompassing or including both the first and second windows.

Thus, neither the Specification, nor the claims, nor the ordinary meanings of the words provides any guidance as to what Applicant intends to cover with this claim language.

Due to the ambiguity as to what is intended by the claimed "***display brightness of the display unit***" and the fact that this claim element is amenable to two or more plausible claim constructions, this claim is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicant considers to be the invention.

See Ex parte Miyazaki (BPAI Precedential 19 November 2008).

15. Claim 1 recites the limitation "***the calculated first display brightness***" (line 6). There is insufficient antecedent basis for this limitation in the claim. For example:

The claim earlier recites, "***a display gradation calculator to calculate a first display brightness***" (line 2). Such "***to calculate***" subject matter serves only as an intended use. There is no antecedent basis for the "***first display brightness***" actually being "***calculated***."

16. Claim 2 recites the limitation "***the display brightness***" (line 2). There is insufficient antecedent basis for this limitation in the claim.

17. Claim 2 recites the limitation "***the specific area***" (line 2). There is insufficient antecedent basis for this limitation in the claim.

18. Claim 2 recites the limitation "***the gradation***" (line 3). There is insufficient antecedent basis for this limitation in the claim.

19. Claim 2 recites the limitation "***each RGB element***" (line 2). There is insufficient antecedent basis for this limitation in the claim.

20. Claim 6 recites the limitation "***the method***" (line 1). There is insufficient antecedent basis for this limitation in the claim.

21. Claim 7 recites the limitation "***the method***" (line 1). There is insufficient antecedent basis for this limitation in the claim.

22. The claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

As a courtesy to the Applicant, the examiner has attempted to also make rejections over prior art -- based on the examiner's best guess interpretations of the invention that the Applicant is intending to claim.

However, the indefinite nature of the claimed subject matter naturally hinders the Office's ability to search and examine the application.

Any instantly distinguishing features and subject matter that the Applicant considers to be absent from the cited prior art is more than likely a result of the indefinite nature of the claims.

The Applicant is respectfully requested to correct the indefinite nature of the claims, which should going forward result in a more precise search and examination.

Claim Rejections - 35 USC § 102

23. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

24. Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by ***Megied et al (US 6,556,253 B1)***.

Regarding claim 1, ***Megied*** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 400*] to calculate a first display brightness in a first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display unit [*e.g., Fig. 2: 120, 120'*]; and

a brightness adjuster [*e.g., Fig. 2: 117*] to adjust a display brightness of the display unit according to the calculated first display brightness (*see the entire document, including the Abstract and Column 2, Line 58 - Column 4, Line 59*), wherein

in response to a second application being displayed in a second window [*e.g., Fig. 1A: W1-W4*] on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Regarding claim 2, ***Megied*** discloses the display gradation calculator calculates the display brightness in the specific area [*e.g., Fig. 1A: W1-W4*] by converting the gradation of each

RGB element in a draw signal of an image displayed in the specific area to a gray scale gradation.

Regarding claim 7, ***Megied*** discloses a window manager [*e.g., Fig. 2: 111-114, 400*] to detect a window [*e.g., Fig. 1A: W1-W4*] in focus [*e.g., active, selected by a user*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

25. Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Kidder (US 5,822,599 A)***.

Regarding claim 1, Regarding claim 1, ***Kidder*** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 202*] to calculate a first display brightness in a first application [*e.g., word processing, spreadsheet, graphics illustrator program*] displayed in a first window [*e.g., Fig. 1: 102*] on a display unit [*e.g., Fig. 2: 204*]; and

a brightness adjuster [*e.g., Fig. 2: 224*] to adjust a display brightness of the display unit according to the calculated first display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*), wherein

in response to a second application [*e.g., word processing, spreadsheet, graphics illustrator program, email update*] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

Regarding claim 6, ***Kidder*** discloses a method [*e.g., Fig. 3*], wherein the first application comprises a word processing application or a spreadsheet application and

the second application comprises an image processing application (*see the entire document, including Column 3, Line 54 - Column 4, Line 12*).

Regarding claim 7, ***Kidder*** discloses a window manager [*e.g., Fig. 2: 224, 226*] to detect a window in focus [*e.g., Figs. 1-2: active*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*).

Claim Rejections - 35 USC § 103

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

27. In the alternative, claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Megied et al (US 6,556,253 B1)*** in view of ***Kidder (US 5,822,599 A)***.

Regarding claim 1, ***Megied*** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 400*] to calculate a first display brightness in a first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display unit [*e.g., Fig. 2: 120, 120'*]; and

a brightness adjuster [*e.g., Fig. 2: 117*] to adjust a display brightness of the display unit according to the calculated first display brightness (*see the entire document, including the Abstract and Column 2, Line 58 - Column 4, Line 59*), wherein

in response to a second application being displayed in a second window [*e.g., Fig. 1A: W1-W4*] on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Should it be shown that ***Megied*** teaches "*first/second applications displayed in first/second windows*" subject matter with insufficient specificity:

Kidder discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 202*] to calculate a first display brightness in a first application [*e.g., word processing, spreadsheet, graphics illustrator program*] displayed in a first window [*e.g., Fig. 1: 102*] on a display unit [*e.g., Fig. 2: 204*]; and

a brightness adjuster [*e.g., Fig. 2: 224*] to adjust a display brightness of the display unit according to the calculated first display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*), wherein

in response to a second application [*e.g., word processing, spreadsheet, graphics illustrator program, email update*] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

Megied and ***Kidder*** are analogous art, because they are from the shared inventive field of display brightness adjustment systems. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to display ***Kidder's*** application programs in ***Megied's*** windows, so as to provide brightness adjustment control while displaying well known, commercially popular window applications.

Regarding claim 2, ***Megied*** discloses the display gradation calculator calculates the display brightness in the specific area [*e.g., Fig. 1A: W1-W4*] by converting the gradation of each RGB element in a draw signal of an image displayed in the specific area to a gray scale gradation.

Regarding claim 6, ***Kidder*** discloses a method [*e.g., Fig. 3*], wherein the first application comprises a word processing application or a spreadsheet application and

the second application comprises an image processing application (*see the entire document, including Column 3, Line 54 - Column 4, Line 12*).

Regarding claim 7, ***Megied*** discloses a window manager [*e.g., Fig. 2: 111-114, 400*] to detect a window [*e.g., Fig. 1A: W1-W4*] in focus [*e.g., active, selected by a user*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Kidder discloses a window manager [*e.g., Fig. 2: 224, 226*] to detect a window in focus [*e.g., Figs. 1-2: active*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*).

Response to Arguments

28. Applicant's arguments filed 20 March 2008 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1, 2, 6, and 7 have been considered but are moot in view of the new ground(s) of rejection.

By such reasoning, rejection of the claims is deemed necessary, proper, and thereby maintained at this time.

Conclusion

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The documents listed on the attached '*Notice of References Cited*' are cited to further evidence the state of the art pertaining to brightness adjusting systems.

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Piziali whose telephone number is (571) 272-7678. The examiner can normally be reached on Monday - Friday (6:30AM - 3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chanh Nguyen can be reached on (571) 272-7772. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeff Piziali/
Primary Examiner, Art Unit 2629
26 February 2009